

REMARKS/ARGUMENTS

This application has been carefully considered in light of the Final Office Action on the merits mailed March 18, 2005. In the Final Office Action the Examiner has reiterated that claims 8, 9 and 13 are withdrawn from further consideration as no generic claim had been allowed. In the light of the amendment to the claims submitted herewith, it is respectfully submitted that at least claim 1 should be in condition for allowance. Therefore, reconsideration of the withdrawal with respect to claims 8, 9 and 13 is respectfully requested as these claims depend directly or indirectly from claim 1 and, therefore, should be considered on the merits as depending from an allowable generic claim. Therefore, consideration of these claims on the merits is specifically requested.

Claims 1-7, 10 and 11 have been rejected under 35 U.S.C. § 102(e) as being directly anticipated by US Patent 6,749,637 to Bahler. In view of the comments set forth below reconsideration of this grounds for rejection is solicited.

The Examiner has indicated that claim 12 is only objected to as being dependent upon a rejected base claim but would be allowed if rewritten in independent form to include the limitations of the base claim and any intervening claims.

The reference to Bahler discloses a shoulder prosthesis where an articulation surface 75 of a cap 65 does cooperate with a natural joint phase of the glenoid or with an implemented glenoid part 85. The surface 75 and the natural or artificial glenoid surface do constitute a first set of articulation surfaces which are slidably movable relative to one another. However, the convex/concave surfaces 43 and 35 referenced by the Examiner are not believed to be articulation surfaces allowing sliding movement relative to one another. Rather, these surfaces are used to set the orientation of the cap 65 with respect to a shaft 11 of the prosthesis before a directional piece 41 is fixed within the rotating piece 33 as set forth in the second paragraph of column 9 of the reference.

In Bahler, once the prosthesis is assembled, there is no sliding of the surfaces 43 and 35 relative to one another so that there can be no arc of a circle A_1 defined by a locus of instantaneous centers of rotation similar to C_1 identified in the present application for patent. Further, there can be no locus similar to A_1 of the present invention which would be located on an opposite side of the first convex articulation surface (S'_1) with respect to a second arc of a circle A_2 defined by a locus of instantaneous centers of rotation similar to C_2 .

With reference to Fig. 1 of the present application, the instantaneous centers of rotation C_1 and C_2 are always located on opposite sides of surface S'_1 . This positioning is important to facilitate movement in abduction of the humerus as explained beginning at line 14 of page 6 of the present application.

Therefore, the reference does not disclose any surface similar to S'_1 in the reference to Bahler since the convex surface 43 is not an articulation surface which allows relative sliding of the prosthesis during normal use. The mating surfaces 43 and 35 in Bahler are not sliding during use of the prosthesis because the screw 53 in the reference actually locks the part 41 to the part 33.

The present invention provides a prosthesis wherein two sets of opposing surfaces slide against one another after setting of the prosthesis, as set forth in claim 1 as amended, such that during abduction and adduction movements of the prosthesis concave surface S_1 slides against convex surface S'_1 and convex surface S'_2 slides against concave surface S_2 . As no similar sliding surfaces, after setting of a prosthesis, appear in the reference to Bahler, reconsideration of the grounds for rejection is requested and favorable consideration and allowance of claim 1 is respectfully solicited.

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It is further believed that the remaining claims which depend from claim 1 should now also be in condition for allowance which action is requested.

Should the Examiner have any questions regarding the allowability of the claims or any questions concerning the amendments to the claims, it is respectfully requested that the Examiner contact the undersigned attorney-of-record at the telephone number shown below for further expediting the prosecution of this application.

Respectfully submitted,

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By 

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Date: June 20, 2005

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